

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

<b>NATIONAL LABOR RELATIONS BOARD,</b>	:	
	:	
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>Case No.3:16-mc-00002-GCM-DSC</b>
	:	<b>(No. 15-72162-2015-9th Cir.)</b>
	:	
<b>SYNERGY ONE LOCATING, LLC and SAFE</b>	:	
<b>MARKX, LLC,</b>	:	
	:	
<b>Respondents,</b>	:	
	:	
<b>DERVON GASKINS,</b>	:	
	:	
<b>Additional Respondent,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>COMCAST CORP., BB&amp;T CORP., WELLS</b>	:	
<b>FARGO BANK, N.A. and HORNETS</b>	:	
<b>BASKETBALL, LLC,</b>	:	
	:	
<b>Garnishees.</b>	:	
	:	

***UNOPPOSED MOTION FOR ORDER TO DISBURSE GARNISHED FUNDS***

The National Labor Relations Board ("Board"), through its undersigned counsel, hereby moves for an order requiring turnover and disposition of monies held pursuant to 28 U.S.C. §3205(c)(7), and to this Court's prior writs of garnishment entered on October 4, 2016 [ECF No. 15] and November 17, 2016 [ECF No. 21]. The Board respectfully directs the court to the Board's concurrently filed brief the Declaration of Board attorney David P. Boehm in support of this motion.

A proposed order is respectfully submitted herewith.

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

David P. Boehm  
Attorney  
(202) 273-4202  
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Contempt, Compliance and Special Litigation Branch  
1015 Half Street S.E., Fourth Floor  
Washington, D.C. 20003

Dated this 11th day of January 2018,  
at Washington, D.C.

## CERTIFICATE OF SERVICE

The National Labor Relations Board certifies that the forgoing:

***UNOPPOSED MOTION FOR ORDER TO DISBURSE GARNISHED FUNDS, BREIF IN SUPPORT, DECLARATION IN SUPPORT, AND PROPOSED ORDER***

were served on Respondents by sending a copy by overnight delivery today to the following addresses:

Synergy One Locating, LLC  
2217 Matthews Township Pkwy Ste D 259  
Matthews, NC 28105-4815

Safe MarkX, LLC:  
3122-529 Fincher Farm Road  
Matthews, NC 28105

and by electronic mail to Steven Schwartz, counsel for Respondent Dervon Gaskins at:  
sgs@theschwartzlawgroup.com

NATIONAL LABOR RELATIONS BOARD

/s/David P. Boehm  
David P. Boehm

Dated at Washington, District of Columbia

this 11th day of January 2018.

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

<b>NATIONAL LABOR RELATIONS BOARD,</b>	:	
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<b>SYNERGY ONE LOCATING, LLC and SAFE</b>	:	
<b>MARKX, LLC,</b>	:	
	:	
<b>Respondents,</b>	:	
	:	
<b>DERVON GASKINS,</b>	:	
	:	
<b>Additional Respondent,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>COMCAST CORP., BB&amp;T CORP., WELLS</b>	:	
<b>FARGO BANK, N.A. and HORNETS</b>	:	
<b>BASKETBALL, LLC,</b>	:	
	:	
<b>Garnishees.</b>	:	
	:	

**BRIEF IN SUPPORT OF *UNOPPOSED* MOTION FOR ORDER TO DISBURSE  
GARNISHED FUNDS**

The National Labor Relations Board ("Board"), having moved for an order requiring turnover and disposition of monies held pursuant to 28 U.S.C. §3205(c)(7), and to this Court's prior writs of garnishment entered on October 4, 2016 and November 17, 2016, submits this brief in support of its motion. The Board's motion is further supported by the Declaration of Board attorney David P. Boehm ("Boehm Decl."). In support of its motion, the Board states as follows:

1. On October 4, 2016, the Board filed an Ex Parte Application for Post-Judgment Writ of Garnishment [ECF No. 13] under the Federal Debt Collection



Procedures Act (“FDCPA”), 28 U.S.C. §§ 3001, 3011, and 3205, to recover monies owing to the Board by Respondents Synergy One Locating, LLC (“Synergy One”) and Safe MarkX, LLC (“Safe MarkX”), pursuant to a liquidated judgment entered by the United States Court of Appeals for the Ninth Circuit and registered with this Court [ECF No. 1].

2. On October 4, 2016, this Court entered a Writ of Garnishment [ECF No. 15] instructing Garnishee Wells Fargo Bank, N.A., (“Wells Fargo”) among other things, not to pay any debt owed or release any nonexempt earnings or property, up to and including \$52,228, to Respondents Synergy One and Safe MarkX.

3. On October 12, 2016, Garnishee Wells Fargo executed an Answer [Boehm Decl., Exhibit A], to this Court’s October 4, 2016 Writ of Garnishment admitting that, on October 6, 2013, it was served with the Writ of Garnishment, as required by 28 U.S.C. §§ 3004(c) and 3205(c)(3). Wells Fargo’s Answer states that, as of the date of service, it held a total of approximately \$5419 in three accounts belonging to Respondent Safe MarkX, and approximately \$709 in one account belonging to Respondent Synergy One, for a total of \$6128, and that, as of the date of the filing of its Answer, it was holding a total of approximately \$6003 in these four accounts.

4. On November 14, 2016, the Board filed an Ex-Parte Application for Pre-Judgment Writ of Garnishment and Sale Order [ECF No. 19] pursuant to the FDCPA, 28 U.S.C. §§ 3007, 3011, 3013, 3101 and 3104, against certain interests, to wit, season basketball tickets and associated licenses (“Tickets”), held by Hornets Basketball, LLC (the “Hornets”), on behalf of Additional Respondent Dervon Gaskins, Sr. (“Gaskins”), owner and managing-member of Respondents Synergy and Safe MarkX.

5. On November 17, 2016, this Court issued a Writ of Garnishment and Sale Order [ECF No. 21] requiring the Hornets to elect to either surrender the Tickets to the United States Marshal for sale, or alternatively, to void its license to Gaskins and transfer the remaining value of Tickets to an escrow account maintained by the United States Treasury pending adjudication of Gaskins' individual liability pursuant to the Judgment, to be determined in a supplemental administrative proceeding before the Board.

6. On December 1, 2016, the Hornets executed an Answer [ECF No. 24] to this Court's November 17, 2016 Writ of Garnishment and Sale Order [ECF No. 21], admitting that, on November 21, 2016, it was served with the Writ of Garnishment and Sale Order, as required by 28 U.S.C. §§ 3004(c) and 3205(c)(3), and electing to void the Tickets held by Gaskins and transfer the remaining value of the Tickets to an escrow account.

7. Pursuant to the Writ of Garnishment and Sale Order [ECF No. 21], on or about December 1, 2016, the Hornets wired an amount of \$18,228.44, representing the remaining value of the Tickets, to an account maintained by the United States Treasury to be held pending further order of this Court. [Boehm Decl. ¶5]

8. On April 11, 2017, the Board issued a Supplemental Decision and Order finding Gaskins jointly and severally liable for satisfying the prior Judgment against Respondents Synergy One and Safe MarkX. *Synergy One Locating, LLC, et al.*, 365 N.L.R.B. No. 58, slip op. at 1-2 (April 11, 2017). [Boehm Decl. ¶6, Exhibit B].

9. On November 30, 2017, the United States Court of Appeals for the Ninth Circuit, in Case No. 17-71651, enforced the Board's Supplemental Decision and Order

in full, finding Gaskins jointly and severally liable with Respondents Synergy One and Safe MarkX for satisfying the Judgment. This constitutes a final judgment with respect to Gaskins' individual liability. [Boehm Decl. ¶6, Exhibit C].

10. On December 19, 2017, Respondents Gaskins, Synergy One, and Safe MarkX entered a settlement stipulation, which included a security agreement and promissory note [Boehm Decl. ¶8, Exhibits D, E, and F]. In paragraph 7(d) of the settlement stipulation, the parties stipulated that:

The parties agree that upon full execution of this agreement, the Security Agreement and Promissory Note, the Board shall move the Western District of North Carolina for, and the signatories below shall not oppose, entry of an order directing garnishee Wells Fargo Bank to disburse to the Board all funds held and subject to the Writ of Garnishment; and agree that the Board may immediately and appropriately distribute those funds, as well as all funds presently held in escrow from the Charlotte Hornets, consistent with the Board's Court enforced Order.

11. The FDCPA, in pertinent part, provides that, “[w]ithin 20 days after receipt of the [Garnishee’s] answer, the judgment debtor may file a written objection to the answer and request a hearing.” 28 U.S.C. § 3205(c)(5). The FDCPA provides further that “[a]fter the garnishee files an answer and if no hearing is requested within the required time period, the court shall promptly enter an order directing the garnishee as to the disposition of the judgment debtor’s nonexempt interest in such property.” 28 U.S.C. § 3205(b)(7).

12. More than twenty (20) days have elapsed since the Board notified the Respondent/Judgment Debtors of their right to request a hearing and since they were served with the Answers of the Garnishees. Respondents have neither filed any objection nor requested a hearing within the time provided by law. [Boehm Decl. ¶9].

13. Respondents Gaskins, Synergy One, and Safe MarkX do not object to the

instant motion, have consented to turnover and distribution of the garnished funds, and have not requested a hearing to determine whether the property garnished qualifies under an exemption, or to dispute that they owe the money to the Board that the Board says it does. 28 U.S.C. §§ 3202, 3205. [Boehm Decl. ¶¶10-11, Exhibit D].

14. Respondents having consented to disposition of the garnished funds and having not requested a hearing, the Board respectfully requests that the Court enter a disposition order directing Garnishee Wells Fargo Bank, N.A., to turn over to the Board those funds being held pursuant to the Court's October 4, 2016 Writ of Garnishment, and releasing the monies garnished from the Hornets pursuant to the Court's November 17, 2016 Writ of Garnishment and Sale Order [ECF No. 21].

15. The notice requirements and all other requirements of 28 U.S.C. § 3205 have been fully satisfied. [Boehm Decl. ¶12].

Accordingly, Petitioner respectfully requests that the Court, pursuant to 28 U.S.C. § 3205(c)(7), grant the Board's motion and enter an order:

- i. requiring Garnishee Wells Fargo to turn over to the Petitioner all monies held by Garnishee Wells Fargo pursuant to the Court's October 4, 2016 Writ of Garnishment [ECF No. 15]; and
- ii. permitting the disposition of funds held in escrow pursuant to the Court's November 17, 2016 Writ of Garnishment and Sale Order [ECF No. 21].

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

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Attorney  
(202) 273-4202  
David.Boehm@nrlrb.gov

Paul A. Thomas  
Attorney  
(202) 273-3788  
Paul.Thomas@nrlrb.gov

Helene D. Lerner  
Supervisory Trial Attorney  
(202) 273-3738  
Helene.Lerner@nrlrb.gov

Contempt, Compliance and Special Litigation Branch  
1015 Half Street S.E., Fourth Floor  
Washington, D.C. 20003

Dated this 11th day of January 2018,  
at Washington, D.C.

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

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<b>v.</b>	:	<b>Case No.3:16-mc-00002-GCM-DSC</b>
	:	<b>(No. 15-72162-2015-9th Cir.)</b>
	:	
<b>SYNERGY ONE LOCATING, LLC and SAFE</b>	:	
<b>MARKX, LLC,</b>	:	
	:	
<b>Respondents,</b>	:	
	:	
<b>DERVON GASKINS,</b>	:	
	:	
<b>Additional Respondent,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>COMCAST CORP., BB&amp;T CORP., WELLS</b>	:	
<b>FARGO BANK, N.A. and HORNETS</b>	:	
<b>BASKETBALL, LLC,</b>	:	
	:	
<b>Garnishees.</b>	:	
	:	

**DECLARATION OF DAVID P. BOEHM IN SUPPORT OF MOTION FOR ORDER TO  
DISBURSE GARNISHED FUNDS**

I, David P. Boehm, state and declare as follows:

1. I have personal knowledge of the facts stated herein, and if called upon to testify to those facts I could and would competently do so.
2. I am employed as an Attorney for the National Labor Relations Board ("Board") in Washington, D.C.
3. On October 12, 2016, Wells Fargo Bank, N.A., executed an Answer to this Court's October 4, 2016 Writ of Garnishment [ECF No. 15], a redacted copy of the Answer is attached hereto as Exhibit A.

4. On December 1, 2016, Hornets Basketball, LLC, executed an Answer [ECF No. 24] to this Court's November 17, 2016 Writ of Garnishment and Sale Order [ECF No. 21], admitting that, on November 21, 2016, it was served with the Writ of Garnishment and Sale Order and elected to void licenses to season basketball tickets ("Tickets") it held on behalf of Additional Respondent Dervon Gaskins, Sr. ("Gaskins") and to transfer the remaining value of the Tickets to an escrow account.

5. Pursuant to the Writ of Garnishment and Sale Order [ECF No. 21], on or about December 1, 2016, Hornets Basketball, LLC wired an amount of \$18,228.44 to an escrow account maintained by the United States Treasury to be held pending further order of this Court.

6. On April 11, 2017, the Board issued a Supplemental Decision and Order, attached hereto as Exhibit B, finding Gaskins jointly and severally liable for satisfying the prior Judgment (registered in this action as ECF No. 1) against Respondents Synergy One, LLC, ("Synergy One") and Safe MarkX, LLC ("Safe MarkX").

7. Attached to this Declaration as Exhibit C is a dispositive order of the United States Court of Appeals for the Ninth Circuit, in Case No. 17-71651, issued on November 30, 2017, enforcing the Board's Supplemental Decision and Order in full.

8. On or about December 19, 2017, Respondents Gaskins, Synergy One, and Safe MarkX entered a settlement stipulation, which included a security agreement and promissory note, attached respectively hereto as Exhibits D, E, and F.

9. More than twenty (20) days have elapsed since the Board notified the Respondents Synergy One, Safe MarkX, and Gaskins of their right to request a hearing and since they were served with the Answers of the Garnishees. Respondents have

neither filed any objection nor requested a hearing within the time provided by law.

10. Respondents Gaskins, Synergy One, and Safe MarkX do not object to the Board's moving for turnover of garnished funds in this matter and have not requested a hearing to determine whether the property garnished qualifies under an exemption, or to dispute that they owe the money to the Board that the Board says it does.

11. Respondents Gaskins, Synergy One, and Safe MarkX have consented to disposition of the funds garnished in this matter.

12. The notice requirements and all other requirements of 28 U.S.C. § 3205 have been fully satisfied.

I hereby affirm under penalty of perjury that the statements set forth herein above are true and correct to the best of my knowledge, information and belief.

s/ David P. Boehm  
David P. Boehm  
National Labor Relations Board  
1015 Half Street S.E., 4<sup>th</sup> Floor  
Washington, D.C.  
David.Boehm@nlrb.gov

Executed in Washington, D.C. this 11th day of January 2018.



**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

<b>NATIONAL LABOR RELATIONS BOARD,</b>	:	
	:	
<b>Petitioner,</b>	:	
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	:	
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<b>MARKX, LLC,</b>	:	
	:	
<b>Respondents,</b>	:	
	:	
<b>DERVON GASKINS,</b>	:	
	:	
<b>Additional Respondent,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>COMCAST CORP., BB&amp;T CORP., WELLS</b>	:	
<b>FARGO BANK, N.A. and HORNETS</b>	:	
<b>BASKETBALL, LLC,</b>	:	
	:	
<b>Garnishees.</b>	:	
	:	

**(PROPOSED)**

**ORDER TO DISBURSE GARNISHED FUNDS**

The National Labor Relations Board (the "Board") has moved for an order requiring Garnishee Wells Fargo Bank, N.A., to disburse funds presently held pursuant this Court's Writ of Garnishment dated October 4, 2016 [ECF No. 15], and permitting disbursement of other funds currently held in escrow pursuant to this Court's Writ of Garnishment and Sale Order dated November 17, 2016 [ECF No. 21]. Respondents do not oppose the Board's motion. Pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. §3205(c)(7), and for good cause shown, the Board's motion is **GRANTED.**

**IT IS HEREBY ORDERED** that Garnishee Wells Fargo Bank, N.A., shall disburse to the National Labor Relations Board all funds presently held pursuant this Court's Writ of Garnishment [ECF No. 15] dated October 4, 2016.

**IT IS FURTHER ORDERED** that the Board is permitted to disburse funds presently held in escrow pursuant to this Court's Writ of Garnishment and Sale Order dated November 17, 2016 [ECF No. 21].

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

# EXHIBIT A

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

**NATIONAL LABOR RELATIONS BOARD,**  
:  
:  
**Petitioner,**  
:  
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**v.**  
:  
**Case No.3:16-mc-00002-GCM-DSC**  
:  
**(No. 15-72162-2015-9th Cir.)**  
:  
**SYNERGY ONE LOCATING, LLC and SAFE**  
**MARKX, LLC,**  
:  
:  
**Respondents,**  
:  
:  
**and**  
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:  
**COMCAST CORP., BB&T BANK., WELLS**  
**FARGO BANK, N.A.,**  
:  
:  
**Garnishees.**  
:

**ANSWER OF GARNISHEE WELLS FARGO BANK, N.A.**

I, Tonia Burris (insert full name of individual preparing this answer), BEING DULY SWORN, DEPOSE AND STATE AS FOLLOWS:

1. I am authorized by the Garnishee named above to make this answer to the Writ of Garnishment served on the Garnishee in the above referenced proceeding.
2. The Garnishee's complete name, address, telephone number and facsimile transmission number are as follows: Wells Fargo Bank, Legal Order Processing  
P.O. Box 1416, Charlotte NC 28201  
P: 480-724-2000 F: 866-670-1561
3. The writ of garnishment was served on the Garnishee at \_\_\_\_\_ a.m./p.m. (circle one) on October 6, 2016 (month, date and year).

4. At any time on or after the date of service of the writ of garnishment in this proceeding, did the Garnishee owe any indebtedness to and/or hold any moneys or other property on behalf of or belonging to any of the following Respondents: Synergy One Locating, LLC and Safe MarkX, LLC, (the "Respondents")?

X Yes

   No

If the answer is yes, state the basis and amount of all indebtedness owed to each of the Respondents, and/or the amount(s) of any moneys and/or the type and value of any other property presently being held by the Garnishee on behalf of each of the Respondents: Bank Accounts

5. If the Garnishee presently has custody, control or possession of any moneys, checking accounts, savings accounts, brokerage accounts, money market accounts, certificates of deposit, or other financial accounts, in which any of the Respondents held an interest when the writ was served or at any time since, state the account number and balance of each such account:

(a) on the date the writ of garnishment was served:

	<u>Account Number</u>	<u>Balance</u>
Safe Markx, LLC	SAV#XXXXXX [REDACTED]	\$5,001.61
Safe Markx, LLC	DDA#XXXXXX [REDACTED]	\$409.69
Safe Markx, LLC	DDA#XXXXXX [REDACTED]	\$8.00
Synergy One Locating Service LLC	DDA#XXXXXX [REDACTED]	\$(-6.00)
Synergy One Locating Service LLC	DDA#XXXXXX [REDACTED]	\$709.28

(b) at the time this Answer was prepared:

	<u>Account Number</u>	<u>Balance</u>
Safe Markx, LLC	SAV#XXXXXX [REDACTED]	\$4,876.61 (Deducted WFB \$125.00 Processing FEE)
Safe Markx, LLC	DDA#XXXXXX [REDACTED]	\$409.69
Safe Markx, LLC	DDA#XXXXXX [REDACTED]	\$8.00
Synergy One Locating Service LLC	DDA#XXXXXX [REDACTED]	\$(-6.00)
Synergy One Locating Service LLC	DDA#XXXXXX [REDACTED]	\$709.28

6. At any time on or after the date of service of the writ of garnishment, did any of the Respondents maintain a safety deposit box at or under the control of the Garnishee?

☐ Yes

☒ No

If the answer is yes, state the number and location of all such safety deposit boxes:

7. In addition to any assets described above, does the Garnishee anticipate owing any indebtedness to any of the Respondents or holding any funds or other property on behalf of any of the Respondents at any time in the future?

☐ Yes     Unknown, we have please a freeze on all bank accounts mentioned above.

☐ No

If the answer is yes, state the basis for and amount of any such anticipated indebtedness and/or the amount of such funds or the type and value of any such property:

8. If Garnishee is unable to determine the identity of Respondents after making a good faith effort to do so, the following is a statement of Garnishee's efforts made and the reasons for such inability.

Not Applicable

9. Is the Garnishee aware of any other garnishments, liens or levies in effect at the time of the service of the writ of garnishment in this case, or since, with respect to any assets owned or controlled by any of the Respondents?

☐ Yes

☒ No

If the answer is yes, describe below or on a separate sheet of paper attached hereto any such garnishments, liens or levies, and the outstanding amount of each, and supply copies of all documents establishing the existence of any such garnishments, liens or levies.

10. If you deny that the Garnishee holds property subject to this writ of garnishment, check the applicable line below: ☐ Not Applicable

☐ Garnishee was not, at the time of service of the writ of garnishment, and has not been at any time since service of the writ of garnishment, in any manner or upon any account indebted to or under liability to any of the Respondents; Garnishee did not have, at the time of service of the writ of garnishment, and has not had at any time since service of the writ of garnishment, possession, custody or control of any money or other property belonging to any of the Respondents, or in which any of the Respondents has or

had an interest; and, Garnishee is in no manner liable as garnishee in this action.

\_\_\_\_\_ Garnishee has the following objections, defenses or set-offs to the National Labor Relations Board's right to apply any of the Respondents' property to the satisfaction of the Board's claim (explain in detail, and provide copies of all supporting documentation): Not Applicable

11. Garnishee has this date delivered or mailed a copy of this answer by first-class mail to the Respondents at:

Synergy One Locating, LLC  
2217 Matthews Township Pkwy Ste D 259  
Matthews, NC 28105-4815

Safe MarkX, LLC:  
3122-529 Fincher Farm Road  
Matthews, NC 28105

and to the attorney for the Board, Paul A. Thomas, Attorney, National Labor Relations Board, 1015 Half Street SE, Washington, D.C. 20003.

I have read the foregoing answer and hereby swear or affirm under penalty of perjury that the responses set forth above are based on facts known to me and are true and correct.

DATED: 10/12/16

Wells Fargo Bank, N.A.

GARNISHEE

By (signature):

*Tonia Burris*

Print name:

*Tonia Burris*

Title:

*operation Team lead*



## EXHIBIT B

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Synergy One Locating Services, LLC and Safe Markx, LLC, as Joint Employers; and Dervon Gaskins, and International Brotherhood of Electrical Workers, Local 387, AFL-CIO.** Cases 28-CA-137972, 28-CA-143708, 28-CA-145625, and 28-CA-147819

April 11, 2017

### SUPPLEMENTAL DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS  
PEARCE AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondents have failed to file an answer to the compliance specification.

On July 1, 2015, the National Labor Relations Board issued an unpublished Decision and Order that approved the Formal Settlement Stipulation between the Charging Party, International Brotherhood of Electrical Workers, Local 387, AFL-CIO, and Respondent Synergy One Locating Services, LLC and Safe MarkX, LLC, as joint employers (Respondent Synergy), and that, among other things, ordered Respondent Synergy to make whole employees Mason Crisenbacker, Sean Cherry, Jacob Cherry, Troy Hager, Henry Maurice Petit,<sup>1</sup> Adam Valdez, Kevin Schroeder, Devin Koivisto, Timothy Montanez, Joshua Merino, Bryan McBride, Joe Moure, Edwin Cyrus Hare IV, Dan Huebner, David Venegas, Cory Jackson, James Redondo, Michael Cummings, Jason Lantrip, Manny Madrid, Pete Martinez, Stan Barker, Greg Digiordi, Garret Forrest, Sal Medina, and Jeff Rose for any loss of earnings resulting from the unlawful discrimination against them by payment to them of the amounts set forth opposite their respective names and at the times set forth in the schedule as reflected in Appendix B to that decision, plus interest until paid in full.<sup>2</sup>

On August 3, 2015, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing in full the remedial requirements of the Board's Decision and Order.<sup>3</sup>

Although not a party to the original unfair labor practice proceeding, a controversy arose over the liability of Respondent Dervon Gaskins (Respondent Gaskins) to fulfill the remedial obligations of the Board's Order as

court enforced. Accordingly, on November 14, 2016, the Regional Director for Region 28 issued a compliance specification and notice of hearing alleging that Respondent Gaskins is personally liable, jointly and severally, with Respondent Synergy for remedying the unfair labor practices of Respondent Synergy and notifying the Respondents that an answer must be filed by December 5, 2016, in conformity with the Board's Rules and Regulations.

The compliance specification additionally sets forth the following allegations.

#### *Relationship between the Respondents*

1. At all material times, and continuing until an unspecified time in 2015, Respondent Synergy, a limited liability company with an office and place of business in Phoenix, Arizona, was engaged in providing utility locating services for utility companies.

2. At all material times, Respondent Gaskins has been the owner and a managing member of Respondent Synergy, and has been a supervisor of Respondent Synergy within the meaning of Section 2(11) of the National Labor Relations Act (Act), an agent of Respondent Synergy within the meaning of Section 2(13) of the Act, and an insider of Respondent Synergy within the meaning of 28 U.S.C. § 3301(5).

3. At all material times, Respondent Gaskins controlled the day-to-day management, labor relations policies, business operations, and financial resources of Respondent Synergy.

4. On at least the following dates, Respondent Gaskins used Respondent Synergy's funds for personal purchases without reimbursing Respondent Synergy:

(a) On or about August 7, and September 4, 2015, February 5, April 4, June 8, July 5, August 8, and September 5, 2016, Respondent Gaskins paid \$1950 each, for a total of \$15,600, in personal rent.

(b) On or about October 26, 2015, Respondent Gaskins purchased \$18,987 in Charlotte Hornets tickets in his own name.

(c) On or about April 21, 2016, Respondent Gaskins purchased \$9300 in Charlotte Hornets tickets in his own name.

(d) On or about September 28, 2016, Respondent Gaskins purchased \$25,000 in Charlotte Hornets tickets in his own name.

5. By the transactions described above in paragraph 4 and other transactions, Respondent Synergy transferred property to Respondent Gaskins without receiving a reasonably equivalent value in exchange for the transfer, at times when Respondent Synergy was insolvent or became insolvent as a result of the transfer.

<sup>1</sup> In accordance with the Board's Decision and Order, Petit is referred to as Henry Maurice Petit, although the compliance specification states his first name as Hendry.

<sup>2</sup> Greg Digiordi is listed as Greg Dejordy on Appendix B.

<sup>3</sup> No. 15-72162.

6. By the transactions described above in paragraph 4 and other transactions, Respondent Synergy transferred property to Respondent Gaskins, at times when Respondent Synergy was insolvent and Respondent Gaskins had reasonable cause to believe that Respondent Synergy was insolvent.

7. At all material times, Respondent Gaskins failed to observe the corporate formalities of Respondent Synergy.

8. At all material times, Respondent Gaskins commingled his assets with those of Respondent Synergy and used corporate assets of Respondent Synergy for his personal use.

9. At all material times, Respondent Gaskins has diverted assets of Respondent Synergy in an effort to render Respondent Synergy insolvent and make it incapable of fulfilling its obligations of the Board's Order as enforced.

10. By the conduct described above, Respondent Gaskins, individually, acted to divert the assets of Respondent Synergy, and is therefore an individual Respondent and is thereby personally liable, jointly and severally, with Respondent Synergy for remedying the unfair labor practices of Respondent Synergy, including the payment of backpay and interest and other relief required by the Board's Order as enforced.

#### *Failure to file an Answer*

Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.<sup>4</sup> By letter dated December 6, 2016, counsel for the General Counsel advised the Respondents that no answer to the compliance specification had been received by the December 5, 2016 deadline, and that unless an answer was filed by December 12, 2016, a motion for default

<sup>4</sup> On November 28, 2016, the compliance specification served on Respondent Gaskins by certified mail was returned to the Regional office marked "refused." The compliance specification served on Respondent Synergy One Locating Services, LLC was also returned to the Regional Office as undeliverable. On December 1, 2016, the Region re-served the compliance specification on Respondent Gaskins, who is also a registered agent of Synergy One Locating Services, LLC, by certified and regular mail. According to the United States Postal Service tracking system, service of the certified mail was again refused. It is well settled that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Atlantic Northeast Transport, Inc.*, 364 NLRB No. 155, slip op. at 1 fn. 1 (2016); *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *I.C.E. Electric, Inc.*, supra at 247 fn. 2; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), enf'd. 843 F.2d 1392 (6th Cir. 1988).

judgment would be filed. Nevertheless, the Respondents again failed to file an answer.

#### *Motion, Order, and Notice*

On December 14, 2016, the General Counsel filed with the Board a motion to transfer this proceeding to the Board and for default judgment. On December 15, 2016, the Board issued an order transferring the proceedings to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion and the compliance specification are therefore undisputed.

#### *Ruling on the Motion for Default Judgment*

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that Respondent Gaskins is personally liable, jointly and severally, with Respondent Synergy for the backpay due to the discriminatees as described in the Board's Order, as enforced, and in the compliance specification. The obligation of the Respondents to make the discriminatees whole under the Board's Order and court judgment will be discharged by payment of a total of \$46,359.00, plus interest as provided in the Board's Order.

#### **ORDER**

The National Labor Relations Board orders that the Respondents, Synergy One Locating Services, LLC, and Safe MarkX, LLC, as joint employers, Phoenix, Arizona, and Dervon Gaskin, an individual, Matthews, North Carolina, their officers, agents, successors, and assigns, shall jointly and severally make whole employees Mason Crisenbacker, Sean Cherry, Jacob Cherry, Troy Hager, Henry Maurice Pettit, Adam Valdez, Kevin Schroeder, Devin Koivisto, Timothy Montanez, Joshua Merino, Bryan McBride, Joe Moure, Edwin Cyrus Hare IV, Dan Huebner, David Venegas, Cory Jackson, James Redondo,

Michael Cummings, Jason Lantrip, Manny Madrid, Pete Martinez, Stan Barker, Greg Digiordi, Garret Forrest, Sal Medina, and Jeff Rose by paying them the amounts set forth in the Board's Order, totaling \$46,359.00, plus interest as provided in the Board's Order.

Dated, Washington, D.C. April 11, 2017

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

---

Philip A. Miscimarra, Acting Chairman

Per PACER docket, no objections to the Board's proposed judgment were filed within 14 days as per the terms of the order. Consequently the proposed judgment submitted by the Board in this case has been adopted by the Circuit.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

NOV 30 2017

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

SYNERGY ONE LOCATING SERVICES,  
LLC; et al.,

Respondents.

No. 17-71651

NLRB No. 28-CA-137972  
National Labor Relations Board

ORDER

On September 13, 2017, this court granted the application of the National Labor Relations Board (“NLRB”) for summary enforcement of its April 11, 2017 supplemental order.

The NLRB’s September 26, 2017 motion to file a corrected proposed judgment (Docket Entry No. 11), which corrects a clerical error in the form of judgment originally submitted by the NLRB, is granted. Unless objections as to form are received within fourteen days from the date of this order, the form of judgment attached to the NLRB’s September 26, 2017 motion will become the judgment of this court.

The Clerk shall serve the proposed judgment attached to the NLRB’s September 26, 2017 motion on respondents at their addresses of record, and shall

also serve respondent Safe Mark X, LLC at 3122-529 Fincher Farm Road;  
Matthews, NC 28105.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Alex Christopher  
Deputy Clerk  
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No. 17-71651
Petitioner	:	
v.	:	
	:	Board Case Nos.:
SYNERGY ONE LOCATING SERVICES, LLC, AND	:	28-CA-137972
SAFE MARKX, LLC, AS JOINT EMPLOYERS, PHOENIX,	:	28-CA-143708
ARIZONA, AND DERVON GASKINS, AN INDIVIDUAL	:	28-CA-145625
	:	28-CA-147819
Respondent	:	

JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD

Before:

This Court having on August 3, 2015, in No. 15-72162, entered its judgment enforcing in full the Order of the National Relations Board in Board Case Nos. 28-CA-137972, 28-CA-143708, 28-CA-145625 and 28-CA-147819, the Board on April 11, 2017, issued its Supplemental Decision and Order and having thereafter applied to this Court for summary entry of a judgment:

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the Respondent, Synergy One Locating Services, LLC, and Safe MarkX, LLC, as joint employers, and Dervon Gaskins, an individual, their officers, agents, successors, and assigns, shall jointly and severally make whole employees Mason Crisenbacker, Sean Cherry, Jacob Cherry, Troy Hager, Henry Maurice Pettit, Adam Valdez, Kevin Schroeder, Devin Koivisto, Timothy Montanez, Joshua

Merino, Bryan McBride, Joe Moure, Edwin Cyrus Hare IV, Dan Huebner, David Venegas, Cory Jackson, James Redondo, Michael Cummings, Jason Lantrip, Manny Madrid, Pete Martinez, Stan Barker, Greg Digiordi, Garret Forrest, Sal Medina, and Jeff Rose by paying them the amounts set forth in the Board's Order, totaling \$46,359.00, plus interest as provided in the Board's Order.

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer  
Molly Dwyer  
Clerk




**Docketed:** 06/07/2017  
**Termed:** 11/30/2017

- 1) agency
- 2) enforcement
- 3) null

**District:** NLRB-1 : 28-CA-137972  
**Date Filed:** 06/07/2017  
**Date Rec'd COA:**  
06/07/2017

[15-72162](#)   **Date Filed:** 07/15/2015   **Date Disposed:** 07/16/2015   **Disposition:** Enforced

## None

Linda Dreeben, Deputy Associate General Counsel  
Direct: 202-273-2960   
[COR LD NTC Government]  
NLRB - National Labor Relations Board  
1015 Half Street, S.E.  
Washington, DC 20003

V.

Synergy One Locating Services, LLC  
[NTC Pro Se]  
c/o Brian Jennings, Vice President of Operations  
2217 Matthews Township Parkway  
Suite D259  
Matthews, NC 28105

Safe Mark X, LLC  
[NTC Pro Se]  
c/o Brian Jennings, Vice President of Operations  
2217 Matthews Township Parkway  
Suite D259  
Matthews, NC 28105

Dervon Gaskins  
[NTC Pro Se]  
2538 Hampton Glen Ct.  
Matthews, NC 28105-6717

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

SYNERGY ONE LOCATING SERVICES, LLC; SAFE MARK X, LLC, as Joint Employers, Phoenix, Arizona; DERVON GASKINS,

Respondents.

06/07/2017	<u><a href="#">1</a></u> 10 pg, 269.19 KB	FILED NLRB'S APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT ENFORCING A SUPPLEMENTAL ORDER. DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. NOTIFIED RESPONDENTS OF FILING. SEND MQ: No. . [10463888] (BY) [Entered: 06/07/2017 04:16 PM]
06/07/2017	<u><a href="#">2</a></u> 2 pg, 9.05 KB	RECEIVED PROPOSED JUDGMENT. [10463901] (BY) [Entered: 06/07/2017 04:19 PM]
06/07/2017	<u><a href="#">3</a></u> 3 pg, 41.44 KB	Filed Petitioner NLRB Mediation Questionnaire. Served on 06/07/2017. [10463905] (BY) [Entered: 06/07/2017 04:20 PM]
06/16/2017	4	Mail returned on 06/16/2017 addressed to Synergy One Locating Services, LLC, re: case opening letter <u><a href="#">1</a></u> sent on 06/07/2017. Returned envelope notes: return to sender, not deliverable as addressed, unable to forward. Resending to: case files; no forwarding address found. [10477624] (LA) [Entered: 06/16/2017 05:25 PM]
06/19/2017	5	Mail returned on 06/19/2017 addressed to Safe Mark X, LLC, re: 6/7/17 order mailed to c/o Brian Jennings, Vice President of Operations 2217 Matthews Township Parkway Suite D259 Matthews, NC 28105. Returned envelope reads: return to sender, not deliverable as addressed, unable to fwd.. Resending to: casefile-no fwd address. [10479346] (Turcios, Margoth) [Entered: 06/19/2017 02:40 PM]
06/30/2017	<u><a href="#">6</a></u> 2 pg, 195.05 KB	MEDIATION ORDER FILED: This case is NOT SELECTED for inclusion in the Mediation Program. Counsel may contact circuit mediator to discuss services available through the court's mediation program, to request a settlement assessment conf, or to request a stay of the appeal for settlement purposes. Also, upon agreement of the parties, the brfing sch can be modified or vacated to facilitate settlement discussions. Csl are requested to send copies of this order to their clients. Info regarding the mediation program may be found at <a href="http://www.ca9.uscourts.gov/mediation">www.ca9.uscourts.gov/mediation</a> . [10494853] (CL) [Entered: 06/30/2017 04:04 PM]
07/24/2017	7	Mail returned on 07/21/2017 addressed to Safe Mark X, LLC, re: Court order filed on 06/30/17 <u><a href="#">6</a></u> Return to sender-not deliverable as addressed. Resending to: casefiles-no forwarding address. [10518683] (JFF) [Entered: 07/24/2017 11:46 AM]
07/24/2017	8	Mail returned on 07/21/2017 addressed to Synergy One Locating Services, LLC, re: Court order filed on 06/30/2017 <u><a href="#">6</a></u> UTf- Return to sender. Resending to: casefiles-no forwarding address. [10518705] (JFF) [Entered: 07/24/2017 11:53 AM]
09/13/2017	<u><a href="#">9</a></u> 3 pg, 201.9 KB	Filed order (SUSAN P. GRABER, JOHNNIE B. RAWLINSON and JAY S. BYBEE) The application of the National Labor Relations Board for summary enforcement of its April 11, 2017 supplemental order is granted. Unless objections as to form are received within fourteen (14) days of the date of this order, the form of judgment already submitted by the National Labor Relations Board will be the judgment of the court. The Clerk shall serve the proposed judgment on respondents at their addresses of record, and shall also serve respondent Safe Mark X, LLC at 3122-529 Fincher Farm Road; Matthews, NC 28105. [10579824] (WL) [Entered: 09/13/2017 02:28 PM]
09/13/2017	10	A copy of the proposed judgement as mailed to respodent Safe Mark X, LLC at 3122-529 Fincher Farm Road; Matthews, NC 28105 [10579832] (WL) [Entered: 09/13/2017 02:30 PM]
09/25/2017	12	Mail returned on 09/25/2017 addressed to Safe Mark X, LLC and Synergy One Locating Services, LLC, re: 9/13/17 order <u><a href="#">9</a></u> return to sender-not deliverable as addressed-unable forward. Resending to: casefiles.. [10596338] (CW) [Entered: 09/27/2017 12:07 PM]
09/26/2017	<u><a href="#">11</a></u> 5 pg, 13.41 KB	Filed (ECF) Petitioner NLRB Motion for miscellaneous relief [Motion to correct the National Labor Relations Board's proposed judgment]. Date of service: 09/26/2017. [10594867] [17-71651] (Dreeben, Linda) [Entered: 09/26/2017 01:59 PM]
09/29/2017	13	Mail returned on 09/26/2017 addressed to Ms. Linda Dreeben for NLRB, re: Court order filed on 09/13/17 <u><a href="#">9</a></u> Return to sender- not deliverable. Resending to: casefiles- no forwarding address. [10599517] (JFF) [Entered: 09/29/2017 11:18 AM]
11/06/2017	<u><a href="#">14</a></u> 2 pg, 18.23 KB	Filed (ECF) Petitioner NLRB Correspondence: Request to finalize the Court's judgment pursuant to the Court's September 13, 2017 order and NLRB submitted typographical correction.. Date of service: 11/06/2017 [10643883] [17-71651] (Dreeben, Linda) [Entered: 11/06/2017 09:23 AM]
11/30/2017	<u><a href="#">15</a></u>	Filed order (Deputy Clerk: AC) On September 13, 2017, this court granted the application of the National

4 pg, 209.33 KB		Labor Relations Board ("NLRB") for summary enforcement of its April 11, 2017 supplemental order. The NLRB's September 26, 2017 motion to file a corrected proposed judgment (Docket Entry No. <a href="#">[11]</a> ), which corrects a clerical error in the form of judgment originally submitted by the NLRB, is granted. Unless objections as to form are received within fourteen days from the date of this order, the form of judgment attached to the NLRB's September 26, 2017 motion will become the judgment of this court. The Clerk shall serve the proposed judgment attached to the NLRB's September 26, 2017 motion on respondents at their addresses of record, and shall also serve respondent Safe Mark X, LLC at 3122-529 Fincher Farm Road; Matthews, NC 28105. [10673028] (WL) [Entered: 11/30/2017 11:19 AM]
11/30/2017	16	A copy of 11/30/17 order and proposed judgment <a href="#">[15]</a> was mailed to Safe Mark X, LLC at 3122-529 Fincher Farm Road; Matthews, NC 28105. [10673035] (WL) [Entered: 11/30/2017 11:20 AM]

PACER Service Center			
Transaction Receipt			
U.S. Court of Appeals for the 9th Circuit - 12/18/2017 06:05:47			
PACER Login:	NLRB2014	Client Code:	
Description:	Docket Report (filtered)	Search Criteria:	17-71651
Billable Pages:	2	Cost:	0.20

Documents and Docket Summary  
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PACER Service Center			
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U.S. Court of Appeals for the 9th Circuit - 12/18/2017 06:05:47			
PACER Login:	NLRB2014	Client Code:	
Description:	Docket Report (filtered)	Search Criteria:	17-71651
Billable Pages:	2	Cost:	0.20

## Garnishees.

**Case No.3:16-mc-00002-GCM-DSC**  
**(No. 15-72162-9th Cir.)**

1. On August 3, 2015, the United States Court of Appeals for the Ninth Circuit entered a Judgment against Synergy One Locating, LLC and SafeMarkX, LLC, enforcing an Order of the Board entered against those companies in Board Case No. 28-CA-137972 on July 1, 2015. The Ninth Circuit Judgment, in pertinent part, requires Synergy One and SafeMarkX, their officers, agents, successors and assigns, to pay the amount of \$46,359 plus interest, to certain named employees.
2. On April 11, 2017, the Board issued an order holding Dervon Gaskins individually



liable for the same amount. The Board's application for summary enforcement of that order is pending before the Ninth Circuit. The parties agree that such enforcement shall be entered in due course without objection.

3. The Ninth Circuit's August 3, 2015 Judgment was registered in this action on January 5, 2016 [ECF No.1]. On October 4, 2016, the Court granted the Board's Application for a prejudgment Writ of Garnishment against funds being held by Wells Fargo Bank. Presently, there is \$6,003.58 being held by Wells Fargo Bank subject to the Court's Writ [ECF No.15].
4. On November 17, 2016, the Court granted the Board's Application for a pre-judgment Protective Restraining Order against Gaskins [ECF No. 23], and its Application for a Writ of Garnishment and Sale Order against Respondents' property being held by the Charlotte Hornets. Pursuant to the Writ of Garnishment and Sale Order [ECF No. 22], the Charlotte Hornets transferred \$18,228.44 to the Board which has been held in an escrow account.
5. The Board has been engaged in post-Judgment discovery to determine whether there are other entities which may be held derivatively liable to remedy some or all of the remainder of Respondents' monetary obligations pursuant to the Board's Court enforced Order. Pursuant to that Order, Respondents presently owe \$49,950, including interest through November 30, 2017, although \$24,232.02 of that debt may be offset by the garnished amounts described above. The Board is also entitled to collect a statutory surcharge in the amount of \$4,995, reflecting 10% of the amount of the debt and accrued interest.
6. In the course of said post-Judgment discovery, the United States District Court for the Western District of North Carolina issued two Orders, the first dated March 13,

2017 [ECF No. 27] and assessing \$2,855.20 in sanctions, and the second dated June 23, 2017 [ECF No. 31] and assessing \$7,007.62 in sanctions, against Respondents and Gaskins, for their failure to comply with their obligations to respond to the Board's discovery requests. The total amount owed in this action by Respondents to the Board is therefore \$64,807.82, which includes the Judgment amount with interest, statutory surcharge, and discovery sanctions.

7. In an effort to avoid further litigation, the Board, Synergy One, SafeMarkX and Gaskins, hereby jointly agree to settle all claims with respect to actual or potential liability under the aforementioned Ninth Circuit Judgment, and the above-captioned matter, as follows:
  - a. The parties agree to resolve all matters pending between them for the amount of \$50,377, inclusive of recoveries obtained from Wells Fargo Bank and the Charlotte Hornets. This amount represents a compromise of the full amount of \$64,807.82 presently due and owing, described above.
  - b. Gaskins shall make payment to the Board in the amounts and at the times set forth in the simultaneously-executed Promissory Note.
  - c. The parties have simultaneously executed a Security Agreement granting Board a second priority lien over certain specified collateral.
  - d. The parties agree that upon full execution of this agreement, the Security Agreement and Promissory Note, the Board shall move the Western District of North Carolina for, and the signatories below shall not oppose, entry of an order directing garnishee Wells Fargo Bank to disburse to the Board all funds held and subject to the Writ of Garnishment; and agree that the Board may immediately and appropriately distribute those funds, as well as all funds presently held in



escrow from the Charlotte Hornets, consistent with the Board's Court enforced Order. The aforementioned funds will be applied toward satisfaction of the amounts due and owing to the Board as set forth in paragraph 6.



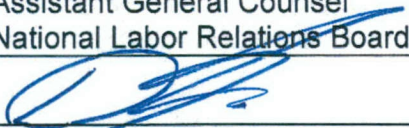

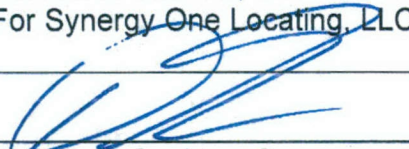
- e. The parties agree that turnover of the funds described in paragraph 6, above, and timely and full payment under the terms of the Promissory Note shall constitute the full satisfaction of any and all obligations that may be asserted against Gaskins, Synergy One, SafeMarkX, and Respondents' related entities, including DJG Locating, LLC, and without limitation against any of their officers, employees, board members, investors, agents and representatives, with respect to the judgment of the United States Court of Appeals for the Ninth Circuit and the Board's decisions referenced above. Upon full payment under the terms of the Promissory Note, the Board will move the Western District of North Carolina for an order terminating the Protective Restraining Order entered by the Court in this matter against Gaskins [ECF No. 23], as well as any writs of garnishment in this action, and discharging the Court's March 13 and June 23, 2017, Orders assessing costs and attorney's fees against Respondent Gaskins [ECF Nos. 27 and 31] for his failure to comply with discovery.
- f. Until satisfaction of the Promissory Note, Respondents and Gaskins shall preserve, and provide to the Board upon request, all relevant records as described and set forth in paragraph VIII of the Protective Restraining Order.
- g. If any payment due under the Promissory Note is not timely sent or turnover is denied as to any of the funds specified in paragraph 6, and upon ten (10) days notice from the Board to Gaskins of the default, if said default has not

been cured, then the Board may, in its sole discretion, declare a default.

Upon declaration of default, the amount due under the Promissory Note shall become immediately due and payable, this Stipulation shall be null and void, and the Board will be entitled to pursue collection of all amounts due in this action, including but not limited to costs and attorney's fees assessed against Respondent Gaskins as referred to in paragraph 7e. Additional consequences of a default in payment are set forth in the Security Agreement and incorporated by reference herein. Notice shall be provided by letter sent to the last address provided to the General Counsel by Gaskins.

- h. This Stipulation, the attached Promissory Note, and the attached Security Agreement contain the entire agreement between the parties, and there is no other agreement of any kind, verbal or otherwise, with respect to the subjects of this Stipulation.
- i. This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument.

IT IS SO AGREED:

 William Mascioli Assistant General Counsel National Labor Relations Board	 Dervon J. Gaskins, Sr. For Himself
 Dervon J. Gaskins, Sr. For Synergy One Locating, LLC	 Dervon J. Gaskins, Sr. For SafeMarkX, LLC
 Dervon J. Gaskins, Sr. For DJG Locating, LLC	



SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement"), dated as of this 19<sup>th</sup> day of December, is made by and between Dervon J. Gaskins, Sr. (the "Debtor"), with an address at 3122-529 Fincher Farm Rd. Matthews, N.C. 28105 and the National Labor Relations Board (the "Secured Party"), with an address at 1015 Half St. SE, Washington, D.C. 20003.

Under the terms hereof, the Secured Party desires to obtain and the Debtor desires to grant the Secured Party security for all of the Obligations.

NOW, THEREFORE, the Debtor and the Secured Party, intending to be legally bound, hereby agree as follows:

**1. Definitions.**

(a) "**Collateral**" shall include the Debtor's real property (subject to any homestead exemption); equipment, fixtures, and other tangible personal property; all cash and non-cash proceeds (including insurance proceeds) of the personal property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof; and all accounts, contract rights, payment intangibles, insurance refund claims and proceeds, chattel paper, electronic chattel paper, documents, promissory notes, healthcare insurance receivables, instruments, securities, other investment property, deposit accounts, rights to proceeds of letters of credit, letter of credit rights, supporting obligations of every nature, and general intangibles (including, without limitation, all tax refund claims, license fees, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill and all licenses, permits, agreements of any kind or nature, software, writings, plans, specifications and schematics), and all liens, guaranties, rights, remedies, choses in action, and privileges presently existing or subsequently acquired, arising by virtue of, but solely as to the Debtor's interests, whether direct or indirect, in the Companies, or any successors, assigns, alter egos, or voidable transferees thereof. Notwithstanding the foregoing, the Collateral shall exclude bona fide wages or distributions paid to the Debtor by the Companies to the extent that such wages or distributions would be exempt from garnishment under the laws of the State of Florida.

(b) "**Companies**" means Synergy One Locating, LLC, SafeMarkX, LLC, DJG Locating, LLC, S&S Utilities Engineering, LLC, their successors, assigns, alter egos, and voidable transferees, and any other company in which Debtor now has or subsequently acquires a property interest.

(c) "**First Lien**" refers to the preexisting debt owed by S&S Utilities or its members to its private lender Kim Cooke in the amount of \$750,000 per loans dated August 1, 2017 for which Cooke has a priority interest in the assets of S&S Utilities



securing such loans.

(d) "**Loan Documents**" means the Note, the Settlement Agreement, this Agreement and all other documents and instruments evidencing, securing or executed in connection therewith.

(e) "**Note**" means the Promissory Note, dated as of the date of this Security Agreement, made by Debtor, for the benefit of Secured Party, in the original principal amount of twenty-six thousand one hundred forty-four dollars and ninety-eight cents (\$26,144.98).

(f) "**Obligations**" shall include all debts, liabilities, obligations, covenants and duties owing from the Debtor to the Secured Party of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Debtor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether evidenced by or arising under the Note, the Settlement Agreement or this Agreement or, whether absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, and all costs and expenses of the Secured Party incurred in the enforcement, collection or otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses.

(g) "**Settlement Agreement**" means the Settlement Agreement, dated as of the date of this Security Agreement, compromising claims of the Secured Party against the Debtor.

(h) "**UCC**" means the Uniform Commercial Code, as adopted and enacted and as in effect from time to time in the State of Florida. Terms used herein which are defined in the UCC and not otherwise defined herein shall have the respective meanings ascribed to such terms in the UCC.

**2. Grant of Security Interest.** To secure the Obligations, the Debtor, as debtor, hereby assigns and grants to the Secured Party, as secured party, a continuing lien on and security interest in the Collateral to the extent of Debtor's interest therein.

**3. Change in Name or Locations.** The Debtor hereby agrees that if the location of the Collateral changes from its present location, or if the Debtor changes or permits to be changed the name or form or jurisdiction of organization of any of the Companies, or establishes an additional name in which he may do business, the Debtor will immediately notify the Secured Party in writing of the additions or changes.

**4. Representations and Warranties.** The Debtor represents, warrants and covenants to the Secured Party that: (a) the Debtor has good, marketable and indefeasible title to the Collateral, has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral, and the Collateral is free from



all encumbrances and rights of setoff of any kind except the First Lien and the lien in favor of the Secured Party created by this Agreement; (b) except as herein provided, the Debtor will not hereafter without the Secured Party's prior written consent sell, pledge, encumber, assign or otherwise dispose of any of the Collateral or permit any right of setoff, lien or security interest to exist thereon except to the First Lien lender and the Secured Party; and (c) the Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

**5. Debtor's Covenants.** The Debtor covenants that it shall:

(a) from time to time and at all reasonable times allow the Secured Party, by or through any of its officers, agents, attorneys, or accountants, to examine or inspect the Collateral, and obtain valuations and audits of the Collateral, at the Debtor's expense, wherever located. The Debtor shall do, obtain, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as the Secured Party may require to vest in and assure to the Secured Party its rights hereunder and in or to the Collateral, and the proceeds thereof;

(b) immediately notify the Secured Party of any event causing a material loss or decline in value of the Collateral, and the amount of such loss or depreciation;

(c) pay when due all taxes that are or may become a lien on the Collateral, and

(d) only use or permit the Collateral to be used in accordance with all applicable federal, state, county and municipal laws and regulations.

**6. Negative Pledge; No Transfer.** The Debtor will not sell or offer to sell or otherwise transfer or grant or allow the imposition of a lien or security interest upon his interest in the Collateral or use any portion thereof in any manner inconsistent with this Security Agreement.

**7. Further Assurances.** Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) describe the Collateral (i) as all assets of Debtor in the Companies, or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Florida Uniform Commercial Code or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Florida Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment. Debtor agrees to furnish any such information to Secured Party promptly upon request.

**8. Events of Default.** The Debtor shall, at the Secured Party's option, be in default under this Agreement upon the happening of any of the following events or conditions (each, an "**Event of Default**"): (a) a failure to pay any amount due under the Note or this Agreement within ten (10) days of the date the same is due; (b) the failure



by the Debtor to perform any of his other obligations under the Loan Documents within thirty (30) days of notice from Secured Party of the same; (c) falsity, inaccuracy or material breach by the Debtor of any written warranty, representation or statement made or furnished to the Secured Party by or on behalf of the Debtor or the Companies; (d) material loss to any of the Collateral, or the entry of any judgment against the Debtor or the Companies or any lien against or the making of any levy, seizure or attachment of or on the Collateral; (e) the failure of the Secured Party to have a perfected security interest in the Collateral subject only to the priority of the First Lien; or (f) any indication or evidence received by the Secured Party that the Debtor may have directly or indirectly been engaged in any type of activity which, in the Secured Party's discretion, might result in the forfeiture of any property of the Companies to any governmental entity, federal, state or local.

**9. Remedies.** Upon default by Debtor in the performance of any covenant or agreement herein or in the discharge of its liability to the Secured Party under the Obligations, the Board shall have all of the rights and remedies provided under the Uniform Commercial Code of Florida, the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. § 3201), the orders of the United States District Court for the Western District of North Carolina in Civil action No. 16-mc-2, or other applicable law and all rights provided herein, all of which rights and remedies shall, to the full extent permitted by law, be cumulative. The Board may require Debtor to assemble the Collateral and make it available to the Board at a place to be designated by the Board that is reasonably convenient to the Board and Debtor. Any notice of sale, disposition, or other intended action by the Board, mailed to Debtor at the address shown on the Board's records, at least 5 days prior to such action, shall constitute reasonable notice to Debtor. The waiver of any default hereunder shall not be a waiver of any subsequent default. All advances, charges, costs, and expenses, including attorneys' fees, incurred or paid by the Board in exercising any right, power, or remedy conferred by this agreement, or in the enforcement thereof, shall become part of the indebtedness secured hereunder and shall be paid to the Board by the Debtor immediately and without demand.

**10. Preservation of Rights.** No delay or omission on the Secured Party's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Secured Party's action or inaction impair any such right or power. The Secured Party's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Secured Party may have under other agreements, at law or in equity.

**11. Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**12. Changes in Writing.** No modification, amendment or waiver of any provision of this Agreement nor consent to any departure by the Debtor therefrom will



be effective unless made in a writing signed by the Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Debtor in any case will entitle the Debtor to any other or further notice or demand in the same, similar or other circumstance.

**13. Entire Agreement.** The Loan Documents (including the documents and instruments referred to herein) constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

**14. Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

**15. Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Debtor may not assign this Agreement in whole or in part without the Secured Party's prior written consent.

**16. Governing Law.** This Agreement will be deemed to be executed in the State of Florida To the extent applicable, the Uniform Commercial Code of the State in which the Collateral is located shall govern the security interests provided for herein.

**17. Jurisdiction and Venue.** The Debtor hereby irrevocably consents to the exclusive jurisdiction of the United States District Court for the Western District of North Carolina; provided that nothing contained in this Agreement will prevent the Secured Party from bringing any action, enforcing any award or judgment or exercising any rights against the Debtor individually, against any security or against any property of the Debtor within any other county, state or other foreign or domestic jurisdiction where Debtor may then reside, work, or operate a business, or where such collateral is located. The Debtor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

**18. WAIVER OF JURY TRIAL.** THE PARTIES WAIVE THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS SECURITY AGREEMENT TO THE EXTENT PERMITTED BY LAW, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS.

**(EXECUTION PAGE FOLLOWS)**



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date first above written.

DEBTOR.



\_\_\_\_\_  
Dervon J. Gaskins, Sr.

SECURED PARTY:



\_\_\_\_\_  
William G. Mascioli  
Assistant General Counsel  
Contempt, Compliance, and Special Litigation  
Branch  
National Labor Relations Board

**PROMISSORY NOTE**

Dated: 12/19, 2017

In consideration for the covenants set forth below and in the Security Agreement and Settlement Agreement executed this day, the undersigned, Dervon J. Gaskins, Sr., an individual ("Maker"), hereby promises to pay to the order of the National Labor Relations Board, an agency of the United States Government ("Holder"), the principal sum of twenty-six thousand one hundred forty-four dollars and ninety-eight cents (\$26,144.98), as hereinafter provided.

**1. Payment.** This Note shall be payable as follows: within seven days of signing, \$10,000.00; followed by six (6) equal installments of two thousand five hundred dollars (\$2,500.00) each, per the schedule reflected below, payable on or before the first day of each successive even-numbered month beginning February 1, 2018; followed by a payment of one thousand one hundred forty-four dollars and ninety-eight cents (\$1,144.98) payable on or before the first day of the next successive even-numbered month following the final payment of \$2,500. Each payment shall be payable by check to: "National Labor Relations Board" to be mailed to: NLRB-Contempt, 1015 Half Street, S.E., 4th Floor, Washington, D.C. 20003 or wired in accordance with the attached instructions, referencing NLRB Case No. 28-CA-137972.

**2. Interest.** This Note shall not bear interest.

**3. Prepayment.** This Note may be prepaid, in whole or in part, at any time without prepayment premium.

**4. Events of Default.** It shall be an Event of Default hereunder if (i) Maker fails to make any payment of any sum due under this Note, the Holder provides notice of default to Maker's counsel, Steven G. Schwartz, Esq. or the Schwartz Law Group, or any address provided by Maker to the Holder for receipt of such notice, and such failure shall continue for ten (10) days after the date when such payment is due, or (ii) Maker makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or files a voluntary petition in bankruptcy, or is judged bankrupt or insolvent (whether voluntarily or involuntarily).

**5. Acceleration.** In the event of any such Event of Default, the full amount owed to the National Labor Relations Board as acknowledged in the Settlement Agreement, less amounts paid as of such default, and such other charges due and payable by Maker hereunder, shall become immediately due and payable, without notice or demand, at the option of the Holder thereof.

**6. Severability.** In the event that any one or more of the provisions of this Note shall for any reasons be held to be invalid, illegal or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Note shall operate, or would prospectively operate, to invalidate this Note, then, and in any such event, such provision or provisions only shall be deemed to be null and void and of no force or effect and shall not affect any other provision of this Note, and the remaining provisions of this Note shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

**7. Waiver.** Maker hereby waives demand, presentment for payment, protest, notice of protest, and of nonpayment and any and all lack of diligence or delays in collection or enforcement of this Note, and expressly consents to any indulgence or forbearance which may be made without notice to any party and without in any way affecting the liability of any party.

**8. Non-Waiver.** In the event Holder (a) grants an extension of time for any payments of the indebtedness evidenced hereby; (b) accepts partial payments; or (c) otherwise exercises or waives or fails to exercise any right granted herein, no such act or omission shall constitute a waiver of any default, or extend or affect the grace period, if any, release Maker, or any part thereof, or preclude Holder from exercising any right, power or privilege herein granted or intended to be granted for any event of default.

**9. Confession of Judgment.** Maker hereby authorizes any attorney at law to appear in any court of record in Charlotte, North Carolina, Palm Beach County, Florida, or any county or judicial district where Maker resides or transacts business, admit the maturity of this Note after this Note becomes due, and waive the issuance and service of process, enter appearance and confess a judgment against Maker in favor of the Holder, for the amount then appearing due, together with costs of suit, and thereupon to release all errors and waive all rights of appeal and stay of execution. A copy of this Note, certified by Holder, may be filed in each such proceeding in place of filing the original as a warrant of attorney.

**10. Governing Law.** This Note shall be construed and enforced according to, and governed by, the laws of the State of Florida.

**11. Jurisdiction and Venue.** The Maker hereby irrevocably consents to the exclusive jurisdiction of the United States District Court for the Western District of North Carolina; provided that nothing contained in this Agreement will prevent the Holder from bringing any action, enforcing any award or judgment or exercising any rights against the Maker individually, against any security or against any property of the Maker within Palm Beach County, Florida, any other county, state or other foreign or domestic jurisdiction where maker may then work, reside or operate a business. The Maker waives any objection to venue



and any objection based on a more convenient forum in any action instituted under this Note.

**12. WAIVER OF JURY TRIAL.** MAKER HEREBY, AND HOLDER BY ITS ACCEPTANCE HEREOF, WAIVE THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS NOTE, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER, MAKER HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

**PAYMENT SCHEDULE**

\$26,144.98	Total Amount Due Pursuant to Note
\$10,000.00	Due in 7 days
\$2,500.00	2/1/18
\$2,500.00	4/1/18
\$2,500.00	6/1/18
\$2,500.00	8/1/18
\$2,500.00	10/1/18
\$2,500.00	12/1/18
\$1,144.98	2/1/19

"WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON ITS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE."

  
Dervon J. Gaskins, Sr.